

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY MARQUET CAMPBELL,

Plaintiff,

No. CIV S-04-1803 GEB DAD P

vs.

G. WOODFORD,

Defendant.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$150.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$3.80 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the

1 preceding month's income credited to plaintiff's prison trust account. These payments will be
2 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's
3 account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

4 The court is required to screen complaints brought by prisoners seeking relief
5 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
6 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
7 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
8 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
9 U.S.C. § 1915A(b)(1),(2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
12 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
16 Cir. 1989); Franklin, 745 F.2d at 1227.

17 A complaint, or portion thereof, should only be dismissed for failure to state a
18 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set
19 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &
20 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer
21 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a
22 complaint under this standard, the court must accept as true the allegations of the complaint in
23 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the
24 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,
25 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

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1 The court finds the allegations in plaintiff's complaint so vague and conclusory
2 that it is unable to determine whether the current action is frivolous or fails to state a claim for
3 relief. In its entirety, plaintiff's complaint provides the following statement of claim: "I received
4 a[n] appeal and the appeal is sapose [sic] to be completed in 15teen [sic] working day[]s and it
5 wasent [sic] and this violated my due process of the time constraint." (Compl. at 5.) It is not
6 clear from the allegations of the complaint what "appeal" plaintiff is claiming was not properly
7 processed or even whether it was an appeal relating to an inmate grievance or an appeal to an
8 unidentified court. Although the Federal Rules of Civil Procedure adopt a flexible pleading
9 policy, a complaint must give fair notice and state the elements of the claim plainly and
10 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff
11 must allege with at least some degree of particularity overt acts which the named defendant
12 engaged in that support plaintiff's claim. Id. Because plaintiff has failed to comply with the
13 requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will,
14 however, grant leave to file an amended complaint.

15 Plaintiff is advised that if he is challenging an inmate grievance, "inmates lack a
16 separate constitutional entitlement to a specific prison grievance procedure." Ramirez v. Galaza,
17 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)),
18 cert. denied, 541 U.S. 1063 (2004). Moreover, the fact that plaintiff may disagree with a decision
19 that was rendered in response to an inmate grievance, does not provide the basis for a claimed
20 constitutional violation. See Sandin v. Conner, 515 U.S. 472, 484 (1995) (noting that state
21 created liberty interests "are generally limited to freedom from restraint"). Finally, if it is an
22 inmate grievance that plaintiff contends was not decided in a timely manner, plaintiff would still
23 have to allege some actual injury suffered by him as a result of the untimely handling of the
24 appeal, such a s a denial of access to the courts, in order to state a cognizable constitutional
25 claim.

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1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
2 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
3 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms
4 how each named defendant is involved. In his complaint, plaintiff provides no allegations how
5 defendant Woodford violated plaintiff's constitutional rights. There can be no liability under 42
6 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions
7 and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d
8 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore,
9 vague and conclusory allegations of official participation in civil rights violations are not
10 sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

11 In addition, plaintiff is informed that the court cannot refer to a prior pleading in
12 order to make plaintiff's amended complaint complete. Local Rule 15-220 requires that an
13 amended complaint be complete in itself without reference to any prior pleading. This is
14 because, as a general rule, an amended complaint supersedes the original complaint. See Loux v.
15 Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original
16 pleading no longer serves any function in the case. Therefore, in an amended complaint, as in an
17 original complaint, each claim and the involvement of each defendant must be sufficiently
18 alleged.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

21 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.
22 Plaintiff is assessed an initial partial filing fee of \$3.80. All fees shall be collected and paid in
23 accordance with this court's order to the Director of the California Department of Corrections
24 filed concurrently herewith.

25 3. Plaintiff's complaint is dismissed.

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1 4. Plaintiff is granted thirty days from the date of service of this order to file an
2 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
3 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
4 docket number assigned this case and must be labeled "Amended Complaint"; plaintiff must use
5 the form complaint provided by the court and attachments may not exceed a total of ten pages;
6 plaintiff must file an original and two copies of the amended complaint; failure to file an
7 amended complaint in accordance with this order will result in a recommendation that this action
8 be dismissed.

9 5. The Clerk of the Court is directed to provide plaintiff a copy of the court's
10 form complaint for a section 1983 action.

11 DATED: August 17, 2005.

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14 DALE A. DROZD
15 UNITED STATES MAGISTRATE JUDGE

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